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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,054	03/09/2005	Daiji Ido	WPMCO133153	6833
83758	7590	11/10/2009	EXAMINER	
Christensen O'Connor Johnson Kindness PLLC			WANG, RONGFA PHILIP	
1420 Fifth Avenue			ART UNIT	PAPER NUMBER
Suite 2800			2191	
Seattle, WA 98101-2347			MAIL DATE	DELIVERY MODE
			11/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,054	<b>Applicant(s)</b> IDO ET AL.
	<b>Examiner</b> PHILIP WANG	<b>Art Unit</b> 2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 July 2009.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 and 13 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11, 13 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/2009</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

***Detail Action***

1. This office action is in response to amendment filed on 7/1/2009.
2. The objection to the specification has been withdrawn in view of the Applicant's amendment to the specification.
3. Per Applicant's request, claims 12 and 14 are canceled.
4. Claims 1-11 and 13 are pending.

**Priority**

5. The priority date considered for this application is 3/13/2003. Formal acknowledgement of foreign priority is indicated in this office action.

***Information Disclosure Statement***

6. The information disclosure statement filed 7/1/2009 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. "Proposal for Supporting MPEG-4 Scalable Video Codec for MBMS and PSS" does not have a legible copy.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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7. Claims 1-11 and 13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-11 recite the limitation of a media distribution apparatus. An apparatus without specific inclusion of a piece of hardware can be interpreted as software. The Applicant can overcome this rejection by amending the claims to include, for example, a processor or memory in the claims. The Applicant argues that "a storing section" includes "a memory". However, a storing section can be a piece of paper used to store information. The examiner does not consider "a storing section" includes "a memory". Claim 13 recites a method in a distribution apparatus. An apparatus without specific inclusion of a piece of hardware can be interpreted as software therefore the method is not considered as limited to a practical application.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-11 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The above amended claims include the limitation of "distribution priorities on a per media data item basis" in "a media distribution setting section that associates control information and distribution priorities on a per media data item basis". The Applicant indicates support of this limitation is located in the specification, page 11, line 10 to page 12, line 7. Upon reviewing the indicated portion of the specification, it appears TOS (Type Of Service)"

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values shows the precedence of distribution and it is for each of media classification, such as text, still image, audio and video. (Specification page 11, lines 10-17). It appears that the control over distribution priorities (or precedence) is according to media classification not on a per media data item basis. The examiner interprets priorities on a per media data item basis enables setting priorities between two text data items. The specification appears only discloses setting priorities based on media data classification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 3, 8, 10, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemoto et al. (herein Yonemoto, USPGN 2003/0162495).

As per claim 1,

Yonemoto discloses

--a storing section that stores a plurality of media data items(Fig. 1 content transmission server stores content, where the server store many media data items);

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**--a media distribution setting section that associates control information and distribution priorities on a per media data item basis ([0164], "Fig. 8 shows a description example of "SMIL"...includes the reproduction information...layout information..." where the SMIL file contains control information. See Fig. 1 for a network transmission environment. [0302], "...a priority of the "TOS field"...according to priority...important data can be transmitted to the receiving terminal more surely..." The TOS field is similar to what applicant has indicated support for the limitation in the specification, page 11. )**

**A distributing section that distributes the plurality of media data items read from the storing section ([0113], "...Fig. 1...content transmission server 10 delivering broadcast media...") and the control information associated in the media distributing setting section, according to the distribution priorities associated in the media distribution setting section ([0164], "Fig. 8 shows a description example of "SMIL"...includes the reproduction information...layout information..." where the SMIL file contains control information. See Fig. 1 for a network transmission environment. [0302], "...a priority of the "TOS field"...according to priority...important data can be transmitted to the receiving terminal more surely...")**

As per claim 3, the rejection of claim 1 is incorporated; Yonemoto discloses  
**wherein the media distribution setting section associates the control information and the distribution priorities, the control information comprising program control information for controlling an output form of a program comprised of the plurality of media data items in a media receiving apparatus**(additional to rejection in claim 1, [0164], "Fig. 8 shows a

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description example of "SMIL"...includes the reproduction information...layout information..."

where the reproduction information controls the layout. see Fig. 36 for a plurality kinds of media -- audio, video, text... ).

As per claim 8, the rejection of claim 3 is incorporated; Yonemoto discloses

**wherein the program control information comprised layout information for positioning the plurality of media data items included in the program on a display apparatus of the media receiving apparatus**([0164], “Fig. 8 shows a description example of "SMIL"...includes the reproduction information...layout information...”)

As per claim 10, the rejection of claim 3 is incorporated;

Yonemoto discloses

**wherein the program control information comprises a port number for distributing the program**([0141], “... a port number specified by...”).

As per claim 11, the rejection of claim 3 is incorporated;

Yonemoto discloses

**the media distribution setting section sets the distribution priorities in a type of service field in an Internet protocol packet; and the distribution section forms the Interact protocol packet by providing the type of service field for each media data item read from the storing section, and distributes the Interact protocol packet to the media receiving apparatus using an Internet protocol.** ([0301], “...TOS field...in the IP header...”; [0302], “...utilizing a priority of the TOS field...according to priority...”).

As per claim 13, it is a method claim reciting the essential limitations of claim 1 is rejected for similar reason set forth in the rejection of claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemoto et al. (herein Yonemoto, USPGN 2003/0162495) in view of Friesen et al. (herein Friesen, USPGN 2004/0114522).

As per claim 2, the rejection of claim 1 is incorporated;

Yonemoto does not specifically disclose

wherein the media distribution setting section assigns the distribution priorities in ascending order of media data using a minimum bandwidth.

However, Friesen discloses

**wherein the media distribution setting section assigns the distribution priorities in ascending order of media data using a minimum bandwidth ([0006], "...the low bandwidth streams must receive high priority treatment..." lower bandwidth having higher priority, therefore in ascending order.).**

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Friesen into the teachings of Yonemoto to include the limitation disclosed by Friesen. The modification would be obvious to one of ordinary skill in the art to want to achieve bandwidth granularity as suggested by Friesen ([0006], "...to achieve bandwidth granularity...").

As per claim 5, the rejection of claim 3 is incorporated;

Yonemoto discloses

**wherein the media distribution setting section ([0164], "Fig. 8 shows a description example of "SMIL"...)**

Yonemoto/ Tischer does not specifically disclose

Assigns a higher distribution priority to program control information related to a program requiring fewer kinds of media data items.

However, Friesen discloses

**Assigns a higher distribution priority to program control information related to a program requiring fewer kinds of media data items ([0006], "...the low bandwidth streams must receive high priority treatment..." low bandwidth streams require fewer kinds of media data items.).**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Friesen into the teachings of Yonemoto to include the limitation disclosed by Friesen. The modification would be obvious to one of

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ordinary skill in the art to want to achieve bandwidth granularity as suggested by Friesen ([0006], "...to achieve bandwidth granularity...").

As per claim 6, the rejection of claim 3 is incorporated;

Yonemoto discloses

**program control information related to a program requiring only static media data items including still images and text, and program control information related to a program requiring continuous media data items including, audio and video data (Fig. 8, where control information including audio, video; [0305], "...The data transmitted...include the still image...text information..." The data transmitted can be the static media data or continuous data as described in the limitation. ).**

Yonemoto does not specifically disclose

assigns a higher distribution priority to program control information related to a program requiring only static media data items, than to program control information related to a program requiring continuous media data items.

However, Friesen discloses

**assigns a higher distribution priority to program control information related to a program requiring only static media data items, than to program control information related to a program requiring continuous media data items ([0006], "...the low bandwidth streams must receive high priority treatment..." where the static data is consider a low bandwidth compared to continuous data.).**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Friesen into the teachings of Yonemoto to

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include the limitation disclosed by Friesen. The modification would be obvious to one of ordinary skill in the art to want to achieve bandwidth granularity as suggested by Friesen ([0006], "...to achieve bandwidth granularity...").

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemoto et al. (herein Yonemoto, USPGN 2003/0162495) in view of Minter et al. (herein Minter, USPGN 2005/0020240).

As per claim 4, the rejection of claim 3 is incorporated; Yonemoto discloses  
**wherein the distributing section distributes the plurality of media data items read from the storing section and the control information to the media receiving apparatus**(Fig. 1 content transmission server stores content; [0164], "Fig. 8 shows a description example of "SMIL"...includes the reproduction information...layout information..." where the SMIL file contains control information. See Fig. 1 for a network transmission environment);

Yonemoto does not specifically disclose  
distributes to said media receiving apparatus using a plurality of bearer channels.

However, Minter discloses

**distributes to said media receiving apparatus using a plurality of bearer channels**([0021], "...a bearer services channel for transporting...certain control..." where the control is transported using bearer channel. This is basically the idea of in-band signaling).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Minter into the teachings of Yonemoto to include the limitation disclosed by Minter. The modification would be obvious to one of ordinary

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skill in the art to want to use bearer channel to transport control information similar to in-band signaling such that it is simpler to manage since the system only has to manage B-channel instead of both B and D channels.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemoto et al. (herein Yonemoto, USPGN 2003/0162495) in view of Hippeläinen et al. ( herein Hippeläinen, USPN 6,614,797)

As per claim 7, the rejection of claim 3 is incorporated;

Yonemoto does not specifically disclose

**When the distribution priorities are associated with the program control information, the media distribution section sets the distribution priorities associated with the program control information and the distribution priorities associated with the pluralities of media data items([0164], “Fig. 8 shows a description example of "SMIL" ...includes the reproduction information...layout information...” where the SMIL file contains control information. See Fig. 1 for a network transmission environment. [0302], “...a priority of the “TOS field”...according to priority...important data can be transmitted to the receiving terminal more surely...” The TOS field is similar to what applicant has indicated support for the limitation in the specification, page 11. )**

Yonemoto does not specifically disclose

priorities associated with the program control information equal to or lower than all of the distribution priorities associated with the pluralities of media data items.

However, Hippeläinen discloses

**priorities associated with the program control information equal to or lower than all of the distribution priorities associated with the pluralities of media data items (c7:34-36,**

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“...the data packets are given priorities over the control packets, i.e. they have a higher priority”.

Where program control information is control information and media data items are considered data. ).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Hippeläinen into the teachings of Yonemoto to include the limitation disclosed by Hippeläinen. The modification would be obvious to one of ordinary skill in the art to want to guarantee transmission of media data by giving media higher priority.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemoto et al. (herein Yonemoto, USPGN 2003/0162495) in view of Schramm et al. ( herein Schramm, USPGN 2006/0031749)

As per claim 9, the rejection of claim 3 is incorporated;

Yonemoto discloses

**wherein the program control information comprises information about a coding method of media data items included in the program(FIG. 35 for example, Image coding, audio coding...).**

Yonemoto does not specifically disclose

wherein said program control information comprises a bit rate information.

However,

Schramm discloses

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**wherein said program control information comprises a bit rate information(FIG 11 –see bitrate)**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Schramm into the teachings of Yonemoto to include the limitation disclosed by Schramm. The modification would be obvious to one of ordinary skill in the art to want to be able to control desired transmission capacity by defining bit rate as desired capacity.

***Response to Arguments***

In the remark,

**1) The Applicant argues –**

The Applicant argues that "a storing section" includes "a memory".

**1) Examiner's Response --**

A storing section can be a piece of paper used to store information. The examiner does not consider "a storing section" includes "a memory". "A storing section that stores a plurality of media data items" can be a piece of paper storing three names of songs written on it.

**2) The Applicant argues –**

Yonemoto fails to disclose "a media distribution setting section that associates control information and distribution priorities on a per media data items basis."

**2) Examiner's Response –**

Please refer to the 35 U.S.C. 112, first paragraph rejections in this office action. The Applicant indicates support of this limitation is located in the specification, page 11, line 10 to page 12, line

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7. Upon reviewing the indicated portion of the specification, it appears TOS (Type Of Service" values shows the precedence of distribution and it is for each of media classification, such as text, still image, audio and video. (Specification page 11, lines 10-17). It appears that the control over distribution priorities (or precedence) is according to media classification not on a per media data item basis. Additionally, Yonemoto, [0302], "...a priority of the "TOS field"...according to priority...important data can be transmitted to the receiving terminal more surely..." The TOS field of Yonemoto is similar to what applicant has indicated support for the limitation in the specification, page 11.

***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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It is noted that any citation [[s]] to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. [[See, MPEP 2123]]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R. Wang/ 11/4/2009

Patent Examiner